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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,408	11/21/2003	Louis C. Cosentino	I2771.IUSCI	3341
7590	11/17/2004		EXAMINER	
Attention of Nicholas P. Johns MERCHANT & GOULD P.C. P.O. Box 2903 Minneapolis, MN 55402-0903			ASTORINO, MICHAEL C	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/719,408	COSENTINO ET AL. <i>(Signature)</i>
	Examiner	Art Unit
	Michael C Astorino	3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 01 November 2003.
- 2a) This action is **FINAL**.                                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 61-89 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 61-89 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/2004</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

1. The examiner acknowledges the preliminary amendment filed November 21, 2003, wherein claims 1-60 have been canceled and new claims 61-89 have been added.

***Election/Restrictions***

2. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I: the support member

Species II: pacemaker as an input/output device

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 61, 63-73, 75-86, and 88-89 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Mark Deffner on November 4, 2002 a provisional election was made without traverse to prosecute the invention of Species I, claim 62. Affirmation of this election must be made by applicant in replying to this Office action. Claims 74 and 86 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 61, 63, 68, 71, 72, 73, 75, 76, 77, 78, 83, 85, 86, 88 and 89 are rejected under 35 U.S.C. 102(e) as being anticipated by Lloyd et al. US Patent Number 6,080,106 A. (cited by applicant).

Claim 61. (New) A system for monitoring weight loss or weight management of a patient and establishing communication to a remote office regarding parameters of the patient, the communication system transferring information from a first location to a remote office location, the system comprising:

(a) a monitoring apparatus (10) at the first location comprising  
a transducing device (10) generating an electronic signal representative of the patient's weight;  
a processor (20) operatively coupled to the transducing device and arranged to process the electronic signals from the transducing device;  
a communication device (modem via 20, column 6, lines 1-10 and column 7, lines 1-65) operatively coupled to the processor and to a communication network (LAN, WAN, or POTS);  
an output device (40) operatively coupled to the processor arranged to present a series of questions to the patient, at least one of the questions relating to the patient's diet or exercise regimen ("did you exercise today?", column 4, line 46);  
an input device (30) operatively coupled to the processor arranged to receive inputs from the patient in response to the queries; and

(b) a processing computer (figure 1) at the remote office location, the processing computer in communication with the monitoring apparatus, wherein the processing computer receives the electronic signal representing the patient's weight and also receives the inputs from the input device, wherein the processing computer issues an alert if it is determined that caregiver intervention is required. (the processing computer issues an alert via the nurse, when the nurse believes such intervention is required, column 7, lines 1-65)

Claim 63. (New) The system of claim 61, wherein the communication device is a modem. (modem via 20, column 6, lines 1-10 and column 7, lines 1-65)

Claim 68. (New) The system of claim 61, wherein the communication device is a radio frequency (rf) transceiver. (column 6, lines 8-10)

Claim 71. (New) The system of claim 61, wherein a nurse is in communication with the patient through the communication network. (figure 1)

Claim 72. (New) The system of claim 61, wherein the output device is a synthetic speech communication device arranged to audibly communicate information to the patient. (80)

Claim 73. (New) The system of claim 61, wherein the output device is a visual display device. (40)

Claim 75. (New) The system of claim 61, wherein the processing computer determines the requirement for caregiver intervention by analyzing points associated with the inputs from the patient. In Lloyd et al. all inputs to questions with a value between 1 to 5 is a point, any point given is indicative of a nurse's follow-up to the patient. Stated otherwise the requirement is met when the user of the system picks a value and the value is transmitted.

Claim 76. (New) The system of claim 61, wherein the processing computer determines the requirement for caregiver intervention by totaling points associated with the inputs from the patient and comparing the total with a threshold. In Lloyd et al. all inputs to questions with a value between 1 to 5 is a point, any point given is indicative of a nurse's follow-up to the patient. Stated otherwise the requirement is met when the user of the system picks a value and the value is transmitted. Moreover, totaling requirement is satisfied when only *one question* is asked and a point value is inputted and transmitted.

Claim 77. (New) A method for monitoring weight loss or weight management of a patient and establishing communication to a remote office regarding parameters of the patient, the method comprising:

measuring the patient's weight with a transducing device generating an electronic signal representative of the patient's weight (10);  
processing (20) the electronic signals representing the patient's weight with a processor operatively coupled to the transducing device;

presenting a series of questions to the patient, at least one of the questions relating to the patient's diet or exercise regimen with an output device coupled to the processor ("did you exercise today?", column 4, line 46);

receiving, in response to the queries, inputs from the patient with an input device operatively coupled to the processor (30, column 4, line 39-53)

communicating the patient inputs and the electronic signals representing the patient's weight to a remote processing computer with a communication device operatively coupled to the processor and to a communication network (modem via 20, column 6, lines 1-10 and column 7, lines 1-65); and

analyzing the patient inputs and the electronic signals representing the patient's weight with the remote processing computer to issue an alert if it is determined that caregiver intervention is required. (the processing computer issues an alert via the nurse, when the nurse believes such intervention is required, column 7, lines 1-65)

Claim 78. (New) The method of claim 77, wherein the communicating step is accomplished via a modem. (modem via 20, column 6, lines 1-10 and column 7, lines 1-65)

Claim 83. (New) The method of claim 77, wherein the communicating step is accomplished via an radio frequency (rf) transceiver. (column 6, lines 8-10)

Claim 85. (New) The method of claim 77, wherein the presenting step is accomplished via a synthetic speech communication device arranged to audibly communicate information to the

patient. (80)

Claim 86. (New) The method of claim 77, wherein the presenting step is accomplished via a visual display device. (40)

Claim 88. (New) The method of claim 77, wherein the analyzing step includes analyzing points associated with the inputs from the patient to determine whether caregiver intervention is required. In Lloyd et al. all inputs to questions with a value between 1 to 5 is a point, any point given is indicative of a nurse's follow-up to the patient. Stated otherwise the requirement is met when the user of the system picks a value and the value is transmitted.

Claim 89. (New) The method of claim 88, wherein the analyzing step includes totaling points associated with the inputs from the patient and comparing the total with a threshold. In Lloyd et al. all inputs to questions with a value between 1 to 5 is a point, any point given is indicative of a nurse's follow-up to the patient. Stated otherwise the requirement is met when the user of the system picks a value and the value is transmitted. Moreover, totaling requirement is satisfied when only *one question* is asked and a point value is inputted and transmitted.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3736

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent Number 6,080,106 A. (cited by applicant) as applied to claim 61 above, and further in view of Melton, Jr. US Patent Number 6,038,465 A.

In regards to claim 62. (New) the system of claim 61, wherein the monitoring apparatus comprises:

a base (10), the base including the transducing device and a housing (30), the housing including the processor, the communication device, the input device, and the output device, but does not disclose a support member extending between the base and the housing. However Melton, Jr. a reference in an analogous art discloses a support member (24, figure 1) extending between the base and the housing. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify system of Lloyd in view of the support member of Melton, Jr., since Melton, Jr. states in column 4, lines 26-47 the frame is used to provide support for the user.

7. Claims 64, 65, 66, 67, 79, 80, 81, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent Number 6,080,106 A. (cited by applicant)

In regards to claims 64, 65, 66, 67, 79, 80, 81, and 82, Lloyd et al. disclose numerous communication devices (column 6, lines 8-10) but does not disclose RS-232 device, the Internet, or satellite communication devices. Official Notice is taken, that it is well known to one of ordinary skill in the art at the time of the invention was made that a RS-232 device, the Internet, or a satellite communication device is equivalent to the communication devices disclosed in

Lloyd et al. and the selection of any one the non-disclosed devices would have been an obvious substitution. Furthermore, the applicant has not disclosed that having a RS-232 device, the Internet, or satellite communication device solves any stated problem or is for any particular purpose, it appears that the communication devices of Lloyd et al. would perform equally well with a RS-232 device, the Internet, and a satellite communication device or the communication devices of Lloyd et al.

8. Claims 64, 65, 79 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent Number 6,080,106 A. (cited by applicant) as applied to claims 61 above, and further in view of Brown US Patent Number 5,997,476 A. (cited by applicant)

Lloyd discloses the communication between the between the monitoring apparatus and the processing computer to be "*Suitable communication means include modems, cable modems, LAN or WAN connections, radio/microwave and other wireless transmitter systems, and the like.*" column 6, lines 8-10. Lloyd does not specifically disclose an IR or Internet communication between the monitoring apparatus and the processing computer. However, Brown a reference in an analogous art discloses the use of the Internet (column 4, lines 36-64) as the communication means between the monitoring apparatus and the processing computer. It would have been obvious to one of ordinary skill in the art at the time the invention was made that the suitable communication means of Lloyd et al. is an Internet connection of Brown since they are we are shown to be interchangeable with the suitable communication means of Lloyd et al.

9. Claims 69, 70, and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent Number 6,080,106 A (cited by applicant) as applied to claims 61, 68, 77 and 83 above, and further in view of Drinan et al 6,354,996 B1. (cited by applicant)

In regards to claims 69, 70, and 83, Lloyd et al. does not disclose a second portion having a wall mount. However, Drinan et al. a reference in an analogous art discloses a second portion with a wall mount (figure 1B, 4A and 4B). It would have been obvious to one in the art at the time of the invention to combine the second portion with a wall mount of Drinan et al. with the remote monitoring system of Lloyd et al. as an equivalent means to comfortably view display information to a user at eye level.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C Astorino whose telephone number is 703-306-9067. The examiner can normally be reached on Monday-Friday, 10:00AM to 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (703) 308-3130. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Astorino  
November 10, 2004